IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.36 OF 2005
WITH
WRIT PETITION NO.37 OF 2005
WITH
WRIT PETITION NO.38 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.A.S. Desai, for the Petitioners.
Mr. Gabriel Pillai with Mr. R.B. Singhvi and Sanjay Singh for Respondent Nos. 1 and 2 and 4 to 6.
Mr. A.H. Palekar, A.G.P. for Respondent Nos. 3 and 7.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 14, 2005

P.C.

. All these petitions can be disposed of by common order as they raise common issue. Rule. Heard forthwith.

2. The nomination of the Respondent No.1 in each of the petitions was rejected on the ground that they were defaulters. The learned Returning Officer proceeded on the footing that due notice dated 1st January, 2001 was notice as contemplated by the requirement of Section 73FF(e) of the M.C.S. Act. Thereafter the respondent No.1 preferred Appeals. The Appeals

were preferred on 24th December, 2004. The respondents were only Returning Officer and the Society. An application for joining of the other candidates whose names were found in the order was made only on 28th December, 2004. That is after the period of limitation prescribed for preferring the Appeal. The Appellate Authority in each of the petitions was pleased to hold that the judgment relied upon for joinder of parties were not applicable.

. In so far as the repair charges is concerned, the authority held that the same was collected by the society without resolution and considering the amount in deposit with the society that could not be a aground for disqualification. The Appellate Authority accordingly allowed the Appeals. It is these orders which are the subject matter of the present petitions.

3. The law on joinder of parties to a petition is well settled. All candidates validly nominated are necessary parties including in case of

rejection of nomination paper. The first of such is the unreported judgment in the case of Shri Tukaram Hari Khamkar vs. Shri Bharat Urban Co-op. Bank Ltd. and others in Writ Petition No.2614 of 1982 decided by the Division Bench of this court on 7th December, 1982 where the learned Division Bench took the view that all candidates were required to be joined as parties. Thereafter another Division Bench of this Court in Kishore Rajaram Sawant vs. The Returning Officer & Ors., in Letters Patent Appeal No.142 of 1996 decided on 26th July, 1996 once again considered the law and held that all parties have to be impleaded and if not so impleaded as necessary parties the Appeal would not be maintainable. The only question is whether the subsequent application for joining can result in holding that the Appeal is properly constituted. Admittedly the application for joinder was made after the expiry of the expiry of the period of three days from 23rd December, 2004. The learned counsel for the Respondent No.1, however, sought to rely on the judgment in the case of S.T. Muthusami v. K.

Natarajan, AIR 1988 SC 616 to contend that the appeal was filed within time and that the bar of limitation would not apply to the case of subsequent addition of parties. It is not possible to accept the said contention. An Appeal has to be properly constituted by joining all necessary parties. The candidates whose nominations were found to be valid are necessary parties. An Appeal, therefore, had to be filed within three days even if 23rd December, 2004 is excluded. That was not so done. The addition of parties could have been considered if the application for addition was within the period of limitation, for the purpose of holding that the Appeal as filed is properly constituted. If the Appeal as filed itself could not result in setting aside the order of the Returning Officer then that Appeal was not properly constituted. Subsequent application for addition of parties after the period of limitation would not cure that defect. In my opinion, therefore, the Appeal must be held not to be maintainable.

4. In so far as the challenge regarding dues, the petitioners seek to rely on the notice of 2003. In the affidavit filed before the Appellate Authority maintenance are claimed from January, 2004 onwards. That notice, therefore, in so far as maintenance charges are concerned, would not be effective and it could not be said to be a due notice in law. In so far as the other issue is concerned regarding repair charges it is pointed out that the said issue is in dispute.

. Even if it is held to be disputed, in my opinion the Appeal on the ground that it was not properly constituted, would not be maintainable and consequently the petitions will have to be allowed.

5. In the light of that Rule made absolute in terms of prayer clause (a) in each petitions.

. All parties/Authorities to act on an ordinary copy of this order duly authenticated by the Personal Secretary/Associate of this Court.

(F.I. REBELLO, J.)